

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Justin Newcomb,

Case No. 24-cv-876 (JWB/TNL)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

B. Eischen,

Respondent.

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In a letter dated March 11, 2024, the Clerk of informed petitioner Justin Newcomb that he would be required to either pay the filing fee for this matter or apply for *in forma pauperis* (“IFP”) status within 15 days, failing which this action could be dismissed without prejudice. *See* Dkt. No. 2. That deadline has now passed, and Newcomb has not applied for IFP status or paid the filing fee for this matter. In fact, Newcomb has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, consistent with the warning previously given to Newcomb, that this action be dismissed without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

## RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,  
**IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT  
PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: April 4, 2024

s/ Tony N. Leung  
Tony N. Leung  
United States Magistrate Judge  
District of Minnesota

*Newcomb v. Eischen*  
Case No. 24-cv-876 (JWB/TNL)

## NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).